

## CONSULTANTS IN A CONFLICT OF INTEREST CODE

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### WHO IS A CONSULTANT?

The Political Reform Act (Gov. Code Sections 81000-91015) provides that "no public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." (Section 87100.) In addition, the Act requires every public official to disclose those economic interests that could foreseeably be affected by the exercise of his or her duties. (Sections 87200-87313.)

The term "public official" includes consultants: "'Public official at any level of state or local government' means a member, officer, employee, or *consultant* of a state or local government agency." (2 Cal. Code of Regs. Section 18701(a).)

Regulation 18701(a)(2) defines "consultant" as an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

- (i) Approve a rate, rule, or regulation;
- (ii) Adopt or enforce a law;
- (iii) Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
- (iv) Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;
- (v) Grant agency approval to a contract which requires agency approval and in which the agency is a party or to the specifications for such a contract;
- (vi) Grant agency approval to a plan, design, report, study, or similar item;
- (vii) Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof;

-OR-

(B) Serves in a staff capacity with the agency and in that capacity performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code.

## CONSULTANTS

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### CONSULTANTS ARE INDIVIDUALS

It is not the business or firm providing services to your agency that is considered the consultant. The *individual(s)* working for the firm who provide the services are considered the consultants. These individuals must file statements of economic interests based on their *personal* financial interests and are subject to disqualification and other laws affecting public officials.

### SERVING IN A STAFF CAPACITY

The regulation includes only those individuals who are performing substantially all the same tasks that normally would be performed by staff members of a governmental entity. In most cases, individuals who work on just one project or a limited range of projects for an agency are not considered to be working in a "staff capacity." The length of the individual's service to the agency is relevant. For example, suppose an individual contracted with a city to study noise at a specified intersection. If the individual took the noise measurements in one day, and issued a report to the planning commission before its next meeting, the individual normally would not be serving in a staff capacity. If, however, a firm's contract provided that it would provide all plan checking services for a city for five years, it is much more likely that individuals performing these services would be in a quasi-staff capacity. In addition, the tasks of the quasi-staff member over this period of time must be substantially the same as a position that is, *or should be*, specified in the agency's conflict of interest code. (Memorandum to the Commission dated March 28, 1994, regarding Regulation 18700, pp. 3-4.) (*Kalland* Advice Letter, No. I-96-078.)

**An individual who makes a governmental decision listed above or serves in staff capacity with the agency is considered a public official who must file a statement of economic interests. The individual is subject to the Act's gift limits and conflict of interest provisions.**

### EXAMPLES

The California Coastal Commission hired an engineering firm to review a hydrological study involving wetlands restoration. Employees of the firm would not be considered consultants under the Act, because they are not making governmental decisions and are only providing services on a sporadic basis for one project. If over time, the firm provides consulting services to the Coastal Commission on a regular basis, or performs substantially the same duties as would otherwise be performed by an individual designated in the Commission's conflict of interest code, employees of the firm would be considered consultants. (*Parry* Advice Letter, No. I-95-064.)

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### LISTING CONSULTANTS IN A CONFLICT OF INTEREST CODE

The Commission realizes that not all consultants participate in making decisions on behalf of public agencies. Rather than amend your code each time you retain a consultant who is in a decision-making capacity, you may use a specialized disclosure category which provides that the disclosure required of consultants shall be determined on a case-by-case basis by the chief executive officer. The chief executive officer may make a determination as to what disclosure, if any, is required by any particular consultant.

This consultant disclosure category should be part of the code. You should add the position "consultant" as a designated position in the appendix of the code with a footnote as shown in the following example:

#### Consultant\*

*\*Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:*

*The (executive director or executive officer) may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to comply fully with the disclosure requirements described in this section. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The (executive director's or executive officer's) determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.*



This fact sheet highlights provisions of the Act concerning consultants. You should not rely on the fact sheet alone to ensure compliance with the Act. If you have any questions, consult the Act and regulations or contact the Fair Political Practices Commission at (916) 322-5660.